

Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

Wednesday, May 8, 1996
9:30 am - 4:00 pm
Honolulu Interisland Terminal
Ohia Room #1, 7th Floor

Meeting Minutes

Attendance

SAC Members present: Hannah Bernard, Stan Butler, James Coon, Beth Goodoni, Walter Haas, June Harrigan-Lum, Louis Herman, Marc Hodges (for Keoni Fairbanks), Greg Kaufman, William Lennan II, Donna Liddicote, Craig MacDonald, Jim McCallum, Mark Mitsuyasu (for Bob Schroeder), Paul Nachtigall, Francis Oishi, Gregory Pai, Jan Pinney, Glenn Soma, Claud Sutcliffe, Skip Weinstein. Excused: Maile Bay, Herman Chong, Jr, Thelma Kia-Shimaoka, Lt. Michael Neininger

Others present: NOAA/SRD: Naomi McIntosh, Jean Souza, Allen Tom, Michael Weiss. NOAA/NMFS: John Naughton, Gene Nitta, Scot Yamashita.

OSP: Brian Burnett, Dick Poirier.

City & County of Honolulu: Art Challacombe.

DOD: Capt. Mike Compton.

Public: Scott Hamilton.

Distributed Materials

- Agenda
- Sanctuary newsletter
- Subcommittee recommendations on the SAC charter
- "Intent to harass" -- proposed revisions

Welcoming Remarks -- Mr. Jim Coon

A) Agenda Changes:

- Move Sanctuary overview toward the end of the meeting.
- Continue review of DEIS comments, followed by discussion of the SAC charter

B) SAC function regarding review of comments on the DEIS/MP -- Mr. Michael Weiss

- focus on comments raising issues not addressed in the DEIS/MP.

- NOAA/SRD will take SAC's discussions and input on the DEIS comments into consideration as it develops formal responses and prepares the FEIS/MP.

Mr. Coon commented that the goal is to move ahead and finalize SAC's discussion on the DEIS/MP comments and suggested the following topics for SAC to focus on:

- Boundary
- Management
- NMFS approach regulation revision
- Outstanding issues to be addressed by sub-committees. Sub-committees will further review these issues and have a white paper to SAC members by May 29 for discussion at the June 6th full SAC meeting.

C) House keeping -- Mr. Allen Tom

1. Review of Minutes from previous meeting: A draft of the minutes is available for review, please comment and edit and give to Hannah. Only clarify and correct statements, no additional or new comments may be included because these are minutes of the last meeting.

2. Public input at SAC meetings will be allowed after each agenda item.

Mr. Greg Kaufman asked whether public notification of the meeting was issued. He also stated that fishermen feel left out. Need to have notice within one week of each meeting.

Mr. Tom explained that notice was placed in newspaper but not within one week of today's meeting. He assured that notices for future meetings will be done within a week of the scheduled meeting.

3. Department of Education gave up their seat on the SAC. This seat has been given to Department of Transportation (DOT), Harbors Division. Glen Soma will be representing DOT.

DEIS/MP Discussions on Review of Comments -- Dr. Gregory G.Y. Pai

Dr. Pai continued as facilitator on discussion of DEIS comments; beginning with where the SAC ended at the last meeting. Research section: Part A, page 7, comment 4 regarding whale population.

A) Research

1. Whale Population (Research - Comment 4)

Ms. Hannah Bernard: There are a number of studies ongoing on whale population. It is a work in progress.

Mr. Kaufman: DEIS addresses it in Naughton/Nitta study and Mobley study. Still humpback whales is an endangered species and hasn't been delisted.

Dr. Paul Nachtigall: How many whales come to Hawaii? Is there cross-mixing with different stocks; interaction with other whale populations in the North Pacific.

Mr. Kaufman: 60% of pre-whaling population. Is that part of the NOAA Humpback Whale Recovery Plan?

Mr. Francis Oishi: Population estimates were variable and wide ranging at whale research conference last year in Lahaina. Numbers ranged from 1500 to 4000. Numbers have a lot to do with Sanctuary management and whether we need a sanctuary or not. Without accurate numbers, don't know what you are dealing with. Who's going to decide research focus? Population numbers are important research areas. Evidence of cross-mixing need to coordinate research of entire: North Pacific stock not only on Hawaii population.

Dr. Pai: How is success measured for an endangered species?

Mr. Gene Nitta: Percent level goal is in recovery plan. Baseline population is determined on which recovery is determined and where you are in recovery process.

Mr. Jim McCallum: Listing process should be explained.

Dr. Walter Haas: What about overabundance of whales. Should not be based on public opinion, but on scientific numbers. Data is currently lacking.

Mr. Kaufman: Original population is 15,000. Delisting is to be addressed for North Pacific stock, not only Hawaii population. Purpose of sanctuary should be to: protect and preserve most important thing about the whale habitat; breeding, and calving areas. Even if full recovery for humpback whales occur, it is irrelevant to need for a sanctuary. ESA's single goal is recovery of the species. Hawaii is important habitat and should continue to be protected.

Mr. William Lennan: Numbers indicate that whales are doing fine. If numbers are reliable and high, whales are doing fine, no need to do anything to fix it. 7000-8000 whales may mean that they are okay in breeding, calving and mating area, no additional measures are needed.

Mr. Stan Butler: Sal Cerchio's study is unsupported. Numbers are not the only issue. Genetic diversity is important. In Washington State, etc., gray whales are gone after because it is a recovered species. Need to consider what happens after delisting; long-term consideration is still needed.

Mr. Skip Weinstein: Need to refocus discussion back to research not management.

Mr. Nitta: Necessity to look at stocks throughout North Pacific to coordinate efforts and get the big picture. NMFS is already working with countries to assess the stock.

Dr. Nachtigall: Regardless of point of view, everyone is advocating whale population research and continued research.

Dr. June Harrigan-Lum: Recommend that the Sanctuary manager develop a research plan.

Mr. McCallum: Useful for public if ongoing research is listed in FEIS/MP.

2. Fish as a food source for whales in Hawaii (Research - Comment 5)

Dr. Louis Herman: Humpbacks don't feed in Hawaii not an issue for whales (except for a couple of sightings over a 10 year period).

Mr. Kaufman: In Alaska where whales feed, there is no restriction on fishermen. If feeding has occurred in Hawaii on rare occasions, there is no need to regulate fishing.

3. Funding for research (Research - Comment 6)

Ms. Bernard: There are many alternative sources of research funding, e.g. private sector funding, government grants. Researchers are not depending on sanctuary funding for research.

Dr. Nachtigall: Make a list of funding agencies (NMFS, NSF, ONR and others).

Mr. Kaufman: Nice to list organizations, but need to identify the financial impact of these organizations to research activities.

Mr. Weinstein: Research predates the sanctuary. Sanctuary is icing on the cake. Concern over user fees being required to fund research.

Dr. Herman: Bulk of research funding has been non-governmental sources. Difficult to get and funds less expensive research. More monies are needed for aerial surveys. More studying on population status, and numbers that can't otherwise be funded. This is necessity, not icing.

Mr. Kaufman: Sanctuary funding acts as a catalyst for NSF grants and other sources. Sanctuary endorsement will help secure funding.

Dr. Nachtigall: If Washington sees other funds being used, they will move off and fund other things.

Dr. Harrigan-Lum: Federal government is moving to shared funding (e.g.: algae bloom project on Maui). DOH is joint funding with NOAA. It will be easier to do as cooperative approach spreads.

Mr. Weinstein: Poor choice of words "icing" on cake. More monies allows larger project to be undertaken.

Ms. Beth Goodoni: Are there preset criteria for determining portions of budget going to research. If we know there is a limit, priorities can be set.

Mr. Tom: Subcommittee will assist in formulating priorities for sanctuary spending.

Ms. Goodoni: Important to say user fees will not be imposed to expand the research program.

Mr. Tom: Described some funded research to date (population studies).

Mr. Claud Sutcliffe: Seems to be consensus that: 1) Sanctuary or SAC that we include research to protect habitat; and 2) No user fees to fund research.

Mr. Tom: Draft Congressional language that no user fees will be imposed in the Hawaii sanctuary.

Dr. Herman: Kinds of research, population research is very limited. Focus not only on population estimates and counts, but on how population functions, singing, escort, need to understand the whales.

Dr. Craig MacDonald: In workshop on Maui, Michael Payne said that money is not coming from the Sanctuary to fund research.

Mr. Tom: SRD has already funded research directly.

Mr. McCallum: Separate parts of NOAA, with own budgets. NMFS does not discourage monies from other sources.

Mr. Kaufman: Michael Payne was only discussing the Recovery Plan.

Mr. MacDonald: Does sanctuary fund recovery plan research? There needs to be some clearer definition of roles between NMFS and SRD as well as role of Recovery Plan in SRD's research.

Mr. Kaufman: This raises the issue regarding the relationship between NMFS Recovery Plan and Sanctuary research: Is there a duplication or not a duplication?

Mr. Weinstein: There will be a working group on research that will recommend research priorities and funding.

Dr. MacDonald: Need clarification of type of research that will be funded by the Sanctuary.

B) Other Native Hawaiian Issues

1. Native Hawaiian rights (Native Hawaiian Issues - Comment 1, 2, 3, 4)

Mr. Lennan: Either no impact or no clue what impact will be. Depends on outcome of the sovereignty movement. If sovereignty movement prevails, there will be an impact on the Sanctuary and others. Unknown.

Mr. Kaufman: Maui County Council brought this up. FEIS/MP needs a section on an analogous situation e.g., Fagatele Bay -- how has sanctuary dealt with native Samoans. Perhaps incorporate traditional Hawaiian management regimes e.g., fishponds, multispecies etc. Will aboriginal "twist" be used or other approach.

Mr. Weinstein: There are several references in the DEIS to protect native uses.

Mr. Sutcliffe: Page 219 in the DEIS/MP is the clearest statement regarding Hawaiian issues. What has been done to dialogue with sovereignty groups? Need to update. If haven't done it, let's do it.

Mr. Tom: Haven't done as much as we should.

Mr. Marc Hodges: The Reserve Commission is grappling with this issue in its ocean management plan for the Reserve waters. Because the Island of Kahoolawe

will eventually be returned to a Sovereign nation, Kahoolawe Island Reserve Commission (KIRC) is dealing with directly, immediately with native Hawaiian rights issues. If reserve waters are included, Native Hawaiian rights need to be recognized.

Ms. Bernard: There is diversity within the native Hawaiian groups. The Sanctuary should engage leaders of all the specific groups because there is no one unified group. Question is how much control will the federal government retain, joint control?

Dr. Nachtigall: There is a SAC member who represents native Hawaiian interests (Thelma Kia-Shimaoka), the SAC should work with her to address these issues.

Mr. Sutcliffe: Mail minutes of SAC meetings to a number of native Hawaiian leaders.

Mr. Hodges: Management plan needs more explicit wording on addressing this issue and how the Sanctuary will work with Hawaiians, rather than just predicting more strict sovereign control.

Dr. Pai: This is a very important issue. Sovereignty Plebiscite council is organizing plebiscite for convention. The purpose of holding a Convention is to bring all major Native Hawaiian groups to determine what type of sovereign entity should represent politically sovereign nation of Hawaiians. Time 1998 - 2000. Issues: ceded lands will be the most sensitive issue, both terrestrial and below surface lands to the three mile limit. Substrate submerged lands are subject to claim by Hawaiian nation. Whatever happens, the Sanctuary will have to deal with it. Degree of sensitivity and openness will be important during these discussions. Kahoolawe situation will set a precedent for larger sovereignty issue.

Mr. Weinstein: Need to avoid 1893 from happening all over again.

Ms. Jan Pinney: We haven't gotten input on these issues. We need to work with the native Hawaiian community SAC representative (Ms. Shimaoka). Need her to provide the SAC with information on this issue. Ask Ms. Shimaoka to submit something to SAC to include in FEIS.

Dr. MacDonald: Regarding comment #4, ceded lands held in public trust for all people of Hawaii, with 20% of all revenues of such lands for native Hawaiians. Be careful not to preclude the outcome. Ask Mr. Graham (attorney) to give a presentation to the SAC.

Ms. Goodoni: If Sanctuary gets established, will have 5 year reviews. Question is how will sovereignty movement affect the Sanctuary, not the other way around. It is not clear now how the Sanctuary will affect all users, but in 5 years we will be better informed and have more information. Don't corner native Hawaiians now because the Sanctuary will be established before the sovereignty issue is resolved.

Mr. Sutcliffe: Ask Ms. Maile Bay and Ms. Shimaoka to comment on Native Hawaiian rights.

Mr. Kaufman: Everyone asks why doesn't the DEIS/MP speak to me. Can't talk about each and every interest in detail. However, DEIS/MP is weak in addressing certain issues (Native rights). Starting with Kahoolawe as a sovereign unit will set a precedent.

Dr. Harrigan-Lum: Supports previous statement made by Mr. Kaufman. Goal: Is sustainable use of resources. The document should say this. Brings others into the policy - one group over another is a bad precedent.

Dr. Herman: FEIS/MP should state that a native Hawaiian interests will be represented by a member of the native Hawaiian community on SAC.

C) Other Issues

1. Federal Government control (Other Issues - Comments 1, 2)

Mr. Kaufman: Other issue category is where opposition lies. These issues are not addressed in laymen's terms. MOU's are very legal-looking and scary to layman. When writing the FEIS/MP, go to idiots guide to law so layman can understand the issues. People need to know that they will still be able to enjoy activities they enjoy now.

Mr. Oishi: To OSP -- has state of Hawaii looked at what they will be giving away in terms of jurisdiction. Third alternative (NOAA preferred boundary alternative) represents a substantial amount of State waters, are we giving away or sharing more authority to the Federal government than we need to.

Dr. Nachtigall: When dealing with whales, MMPA and ESA already take over protection of whales from the State anyway. Humpback whales are a federal resource. Doesn't think the State is not giving anything up.

Mr. Oishi: Sharing response with Federal government implies consensus. Authority over submerged lands.

Dr. Harrigan-Lum: Department of Health (DOH) does not feel they are sharing more jurisdiction with Federal government. DOH does not see Federal usurpation. Presence/absence of Federal government doesn't affect DOH regulations. DOH does not feel they are giving up anything because of the Sanctuary. Increase in fines is result of approach rules violation, nonviolation of sanctuary rule. Involvement with the Sanctuary provides networking opportunities to promote education and research.

Dr. Haas: Some members of the Kauai County Council are under the impression that out to three miles they have control.

Mr. Lennan: Regulatory authority for submerged lands lies with Corps of Engineers. Fed's have already "usurped" State's authority.

Dr. Pai: Costs/benefits of relationship with Federal government from the State's perspective. Main issues:

- State jurisdiction over submerged lands.
- One difference is that after sanctuary creation is presence of NOAA. NOAA's presence is solely by working within existing State and Federal agency authority.
- Sanctuary presence is seen to help with staffing, enhanced regulatory enforcement in sanctuary area.
- Don't think loss of authority on submerged lands, substrate alteration is a major concern.
- Not giving up authority; sharing yes but the cost is not bad compared to the benefits.

Mr. Kaufman: Concern that two halves are going to now make a whole. Feds will not have absolute jurisdiction and State lacks resources. Feds will bring muscle to the State which will create a net result of the appearance of more enforcement.

Dr. Pai: Alternative 3, SRD does adopt approach regulations creating overlap of State and Federal regulations; reinforces the enforcement process. Greater resources for enforcement is result.

Mr. Kaufman: The net result needs to be made more clear in the FEIS/MP.

Dr. MacDonald: Regarding greater enforcement, the Ocean Resources Management Plan has expressed as one of its goals enhanced enforcement. The benefits have to outweigh the Sanctuary as an additional player in order for DBEDT to support it. Minutes from previous SAC meeting (page 4 and 5) don't seem to accurately reflect what NOAA's role is. The minutes read that the Sanctuary has removed itself as an approval authority over these permits, what does this mean?

Mr. Weiss: Under the MOU's being developed with State agencies, the Sanctuary will work with agencies to review certain applications/permits and provide recommendations. SRD does not take final action on the permit, only makes recommendations. SRD does not have veto power or approval authority on the permit. Under the proposed regulations, SRD cannot stop the issuance of the permit. SRD is no different from the public in that respect, it could appeal; (as could anyone) or continue discussion with the permitting agency.

Dr. Pai: This issue was reviewed. It does not, include surrender of permit authority to SRD, not onerous to existing permitting authority.

Dr. MacDonald: DBEDT is concerned about permit streamlining and simplification. If sanctuary leads to increased permitting procedures, DBEDT cannot support the Sanctuary.

Dr. Pai: How we deal with permits and refining State review processes is a separate issue from the Sanctuary's involvement.

Dr. MacDonald: Request to see MOU's, presented to the SAC.

Dr. Nachtigall: Does state marine patrol enforce whale regulations?

Dr. Pai: Conceivable. Depends on arrangements made.

Ms. Bernard: Already happens.

Dr. Harrigan-Lum: Environmental management programs are already inviting more review to result in better decision making/environmental management. This will involve more people, more agencies, but public participation is being encouraged. Result is more voluntary environmental management.

Dr. Herman: Minutes from prior SAC meeting says NOAA removes itself from permitting; does this mean NOAA (NMFS) will no longer be issuing permits on scientific research?

Mr. Weiss: This statement in minutes needs to be modified to read SRD not NOAA.

Mr. Kaufman: In Australia, one permit is now seven permits needed. Disagrees with Ms. Harrigan. SRD's influence will be dictated not by MOU's but by available funding for projects, which the state agency wants. If SRD will bring resources to make it possible for enhanced enforcement, State agencies will not

likely reject SRD's comments. This will lead to greater influence by SRD on the agency, even if SRD has no decision-making authority on a specific permit.

Mr. Lennan: For permit actions, SRD will be invisible, is this true?

Mr. Weiss: For federal permits, SRD will work with NMFS who already reviews such permits under either section 7 of the ESA, or the Fish and Wildlife Coordination Act. For State permits, SRD is developing MOUs with DOH and DLNR.

Ms. Bernard: State has laws, no monies to staff it. SRD adds layer of support not additional burden.

Ms. Pinney: Supports greater enforcement, but users are required to jump through more hoops year after year. What does the sanctuary mean to the user; need to explain very clearly in the FEIS/MP how coordination will work. Don't want surprises.

Mr. Sutcliffe: Regarding enforcement capacity: page 141, alternative 3, "NOAA does not find it necessary to add independent regulatory costs"

Mr. Kaufman: Have to leave soon and want to address Other Issues -- Comment 4. Increased tourism and economic impacts. This is a very important issue. Need to have an understanding of the impacts the presence of the Sanctuary will have. Analogy with extended runway on Maui. DEIS implies sanctuary = support of whales. No sanctuary: implies people don't care for whales. The real impact of sanctuary needs to be addressed. Economic impacts study is needed. If sanctuary attracts too many people, it could have adverse impact on resources. How will increased tourism impact the economy and the resources? Sanctuary turns on itself; may be shooting itself in the foot because it may attract more tourists; could it go beyond carrying capacity?

Dr. Pai: Potential for future regulations. Navy is concerned about potential requirements. Does not see it as opening any additional door that is not already there. If change is going to be made it will have to be in a conscious process and review and approval process involving the SAC and the Governor.

Mr. Kaufman: From user standpoint, Sanctuary will have the added result of agencies doing their jobs better and this will have an impact on the users.

Mr. Weinstein: Very real concern to all end users because alot of people are unaware of existing laws; will be surprised when enforcement increases.

NOTE: Mr. Kaufman: Left the meeting at 11:35 a.m. and asked to be on three committees that Mr. Coon mentioned at the beginning of the meeting (boundary, management, regulations/other onerous issues. He also stated that he would be willing to chair any of them.

Mr. Butler: Need to start enforcing existing regulations because it will be a problem if we don't and the number of whales increase. Human population is estimated to double in the next thirty years. This fact should have immediate bearing on planning and regulating use of Hawaii's natural resources.

2. Community resource management programs (Other Issues - Comment 3)

Dr. Harrigan-Lum: DOH starting to do this. FEIS should contain strong statements supporting education, research and development of community resource groups for resource management programs.

3. Sanctuary will attract more tourists (Other Issues - Comment 4)

Mr. Sutcliffe: DEIS does not address the economic development benefits of the Sanctuary. Need to clarify communication.

Dr. Pai: Disjunction in perception of sanctuary. Need to clarify this. Have not looked at impact on whale population and need to look at it. Basic support based on Sanctuary not being bad for economy, but being good. Impact effect of that hasn't been evaluated. "Feedback effect" of Sanctuary not looked at. OSP sees Sanctuary as being good at providing basis for statewide whale industry. Protect humpback environmental heritage; what Hawaii does with the Sanctuary will be projected to the world.

Mr. Sutcliffe: Alternative 3 doesn't have economic impact assessment attached to it. It is needed.

Mr. Weinstein: This is the first species-specific Sanctuary; how will it benefit the economy. Why will more tourists come here when they already are coming to see the whales.

Mr. Coon: There is limited ability to expand because DOBOR limits cap on the number of commercial operators in harbors, except Big Island.

Ms. Goodoni: Sanctuary is like a Fish Aggregating Device (FAD). If there is increase in more tourist, more whale-watch boats. Will there be need for more whale watching regulations? Sanctuary is a back-door way of supporting State or NMFS to make rules for whale watch boats, etc.

Ms. Bernard: FEIS could expand on the economic benefits of sanctuaries. Sanctuary means area of special significance; a place to "take extra care". Tourists complain about loss of Hawaiianness. Sanctuary keeps natural environment intact. Not a money issue only; it is also a heritage issue.

Ms. Pinney: Sanctuary started off to protect humpback whale. Issue of State wanting it because of tourism, etc. was new element not raised by the State at the last SAC meeting. Hawaii is unique destination, whales are part of that. Will tourist continue to come? Will sanctuary put us over the edge, over other tourist sites? How does Sanctuary promote that? Will Sanctuary really define whether people will come to Hawaii? They already come.

Dr. MacDonald: Incremental benefits; certain segments can be targeted by the Sanctuary, vitalizing recurring industry. Growth of tourism -- we are looking at carrying capacity; harbors are already at capacity. Harbor infrastructure impacts can be expected. Changes will be needed if there will be more tourists. Other changes, vessels increasing, larger companies taking over smaller companies. Some would argue that the Hawaii Visitor Bureau could promote whales, rather than the Sanctuary. But the Sanctuary is good too.

Mr. Weinstein: Hawaii is unique, the whales are unique. Sanctuary means protection. What is impact on whales of bigger boats, not more boats? Effects of more people on all islands needs to be addressed.

Mr. Butler: Humpback whales are not exclusive to Hawaii but are an interstate and international resource. The Sanctuary may act as a shield, protecting Hawaii's economic interests as it protects the whales. Hawaii's humpback whales also visit the waters of Alaska, Oregon, Washington, and California...Japan, Mexico, Russia. Whales are resources in the global economic forum under international trade and conservation agreements. The International Whaling Commission (IWC) recognizes the \$500 million a year whalewatching industry as "a sustainable utilization of whale resources." The IWC is currently developing recommendations for the regulation of whalewatching internationally. Whaling factions are spending millions of dollars in efforts to rescind the temporary whaling moratorium and resume commercial whaling. Some whalers view whalewatching and other forms of ocean recreation, as potential obstacles to recovery and therefore in conflict with their interests. People of other Pacific state share our interest in humpback whales. Like Hawaii, they see millions of dollars in revenues from whalewatching. Ocean users in these locations, whether they be whale watchers or whale hunters have recourse through international and national means to influence ocean use in Hawaii should they feel we are not adequately protecting our shared resource. It is advisable that we show a strong commitment towards whale recovery with an unassailable policy of whale conservation. The establishment of a sanctuary demonstrates to conservationists and whalers alike the willingness and ability of

Hawaii to serve as responsible stewards of the humpback whale. It also gives us an opportunity to decide our own fate and establish a leadership role in whale protection.

Mr. Lennan: Can't believe the Sanctuary will bring hordes of people; it will bring some but there will be some huge increase. Hotels are likely to benefit more than boat owners.

Dr. Haas: Saturation of natural resources, already overwhelmed by tourists. I remember when number of tourists were 500,000. Now its six million. Experience is degrading. Noise, crowds, tourists at the Na Pali coast and Waimea canyon. Regulations would be needed, but regulations hurt late-comers (businesses). Point will be reached where there will need to be a limit on boats, helicopters etc.

Dr. Herman: Increase in tourism will occur with or without a sanctuary because the whales are highly advertised. Sanctuary will only add tiny fraction. The Sanctuary will not create the problem.

Dr. Haas : Agreed with Dr. Herman's last statement.

4. The Sanctuary and the Ocean Resource Management Plan (ORMP) (Other Issues - Comment 5)

Ms. Bernard: Sanctuary could provide possibilities of funding to the ORMP.

Mr. Weinstein: Sanctuary monies go to sanctuary staff, not necessarily to other programs.

5. Water quality (Other Issues - Comment 6)

Dr. Harrigan-Lum: Don't see any impact. If adverse water quality affects whales, we may need to look at it. Practically no residual impact. No current evidence of impact of turbidity plumes on whales

Mr. Sutcliffe: Page 180 of the DEIS, more fines sounds like user fees. The impact to the resources is confusing.

Ms. Bernard: Sanctuary will benefit water quality, e.g.: water quality program on Maui.

Dr. MacDonald: Why is DOH entering into MOU's with the Sanctuary program if only concerned with nearshore areas?

Dr. Harrigan-Lum: MOU sets up field presence. We don't know what the impact is with whales and discharges - we are still collecting information .

Dr. MacDonald: That is a weak linkage. Is the regulation to protect water quality going to withstand challenge in court.

Mr. Weiss: There is some linkage between water and whales. Incorporating State's regulation has justification.

Dr. Harrigan-Lum: The Clean water act accepts the whales habitat.

Dr. MacDonald: What about agricultural activities?

Dr. Harrigan-Lum: Agriculture runoff, not included in DOH's permit plan.

Mr. Weiss: Our regulations apply only to those discharge activities that require a permit or authorization from an existing permitting agency.

Dr. Harrigan-Lum: More eyes out in the field. Could notify DOH. Two ways to look at this.

1) Management goals via the permit process.

2) Environmental goals: quality of what we observe.

Public is more concerned with #2. DOH focuses on environmental goals to help improve environmental qualities

Mr. Weinstein: Key word is "Impact".

Dr. Pai: Asked the Council if Comment 7 had been covered in the SAC's previous discussion. The SAC agreed it had and Other Issues - Comment 7 was skipped.

6. Information on whales needs updating; doesn't support the boundary selections (Other Issues - Comment 8)

Dr. Herman: Assume reference is made to limited boundaries (i.e., where the whales are). This is not the preferred boundary alternative, is that correct? Correction needed on some areas.

Mr. Weinstein: If this is where whales are, than this is where the boundary should be; entire state.

Ms. Bernard: Based on the information the boundary should be statewide, without swiss cheese holes because of Navy concerns.

Dr. MacDonald: Just because the animal's range includes all of the Hawaiian Islands, that is not justification to include all of Hawaii into the Sanctuary. Some areas could carry heavier weight and Sanctuary boundary should encompass only sub-areas that are essential habitat. It is fallacious to assume that because whales are there the Sanctuary should also be there.

Dr. Harrigan-Lum: Clarification needed on humpback whales specifically, not whales in general. Have a professional editor look through the DEIS/MP to put together a better organizational structure for the FEIS/MP. Simplify the language, scenario development, report organization, how parts relate to each other. Put all preferred alternatives in one section so people can understand it without having to look in different places.

Mr. Weinstein: Boundary selection was worked over at last meeting. Does information need to be updated before decision is made?

Dr. Haas: Present data doesn't justify boundaries. Agree with Craig that boundaries don't identify essential areas. We don't have enough data to evaluate boundary.

Dr. Herman: If trend continues, whales will spread throughout island. Need to protect that habitat now and not wait; be proactive. Can't know that they are only engaging in breeding, calving in specific bays. All areas where whale lives need to be protected.

Mr. Weinstein: What about provisions for adjusting boundaries based on new data? Can the boundary be changed?

Mr. Weiss: The boundary can be changed subject to full public review working with SAC, and Governor review and approval. A good opportunity to address the need for a change is during the 5 year review of management plan required by the NMSA.

Dr. MacDonald: Hierarchy of needs. Identify critical areas for reproduction, cow-calf areas (4-islands area). As the population increases, there is nothing to prevent inclusion of other areas. Keep at the 4 islands area. Expansion should be based on data and on happiness of the people in the 4 island area with the program and the need. Start small and slowly expand; don't start too big.

Dr. Pai: Wrap up of review of DEIS/MP comments. Congratulations to SAC on maintaining civility, open-mindedness, to move forward. Appreciate substantive discussion. Minutes of discussion will be sent to NOAA for consideration as it develops the FEIS/MP.

(Lunch)

Other Business

Mr. Coon: Introduces that Office of State Planning is traveling to Washington D.C. and Greg will present the reasons for the trip.

Dr. Pai: Need to distinguish roles of SAC and OSP. SAC is providing input on comments received on the DEIS/MP, which will be considered by NOAA/SRD in preparing the FEIS/MP. OSP is the lead State agency designated to work with NOAA on the Sanctuary. OSP works with other State agencies and represents the State and the Governor's position. OSP briefs the Governor on the process, proposals, and issues. Allow the Governor to make counter proposals.

Trip purposes: To give NOAA the OSP and State position.

Issues discussed with the Governor that will be presented to NOAA:

- 1) Any change to the sanctuary requires Governor approval. Disapproval by the Governor means that the change will not take place in state waters.
- 2) Mandatory review of the management plan every five years.
- 3) References in the FEIS/MP to submerged land clearly state that NOAA does not assume title to or ownership of those lands within the Sanctuary.
- 4) Sanctuary will not impose user fees or new regulations. Sanctuary will not interfere with the State's authority to impose user fees.
- 5) Sanctuary fines levied shall be pursuant to a pre-arranged penalty schedule.
- 6) Sanctuary program will only review and comment on permits only through an approved MOU or MOA with the State or county agency with the permitting or regulatory authority. No new regulatory mechanism.

Specific points that will be raised with NOAA and Congressional staff.

- 1) Boundary: OSP is recommending a position on boundary, which is the NOAA preferred boundary alternative. Want to accept this as a working framework.

Dr. Herman: Congressionally designated boundary --Kilauea Point on Kauai makes no sense. If selected, deletion of Kauai, or it will open the possibility of public scrutiny saying other areas not included and of more importance.

Dr. Pai:

- 2) User fees: Clearer language in FEIS. Possibly including in the federal law a prohibition against mandatory user fees in Hawaii.

- 3) Advocating a one million dollar annual budget for the Hawaii site.
- 4) Ensure private-public sector cooperation for Sanctuary management. Formation of a nonprofit to support organizations to help in fundraising for sanctuary management.
- 5) State administer the SAC with NOAA funding.
- 6) Sanctuary manager must be a resident of the State of Hawaii.

Ms. Pinney asked if the SAC could get a copy of this?

Dr. Pai agreed to distribute a copy to the SAC.

Mr. Weinstein: Mandatory user fees, as opposed to what? Just say no user fees.

Dr. MacDonald: The first time I heard about formation of a non-profit was at the user fee conference. There was opposition because of perceived competition with private interests. Sanctuary users in other location see sanctuary non-profit as competition (for sales of cups, T-shirts, etc.); want to limit competition. Find out if NOAA has looked into issue of decreasing competition.

Dr. Herman: Competition is a concern. All research groups make their living via non-profits.

Ms. Donna Liddicote: Some of the Sanctuary nonprofit monies can be given to researchers.

Mr. Sutcliffe: Wants the option as a consumer to buy Sanctuary products.

Mr. McCallum: Will there be a breakdown of the one million budget?

Mr. Oishi: How would Sanctuary nonprofit funds influence research and education. Who prioritizes the awarding of these funds.

Ms. Bernard: What about sanctuary license plates?

Dr. MacDonald: Request that the monies will be strengthened with budget for the one million.

Mr. Sutcliffe: Will State take a position on the approach regulations?

Dr. Pai: State has no position at this time on approach regulations. That is an issue that is being brought up through the SAC.

Mr. Coon: SAC can only address DEIS issues. If SAC comes to a agreement, OSP could be the vehicle to NOAA also.

Dr. Pai: SAC consensus is reflected. SAC is not limited to DEIS only. SAC can address sanctuary management issues.

Dr. Nachtigall: Include five other issues on page 186 - SAC outline.

Mr. Weiss: Has the SAC finished with the DEIS comments and is it moving to other issues?

Mr. Sutcliffe: Responding to the "intent to harass" issue would be part of the DEIS

Dr. MacDonald: (response to Mr. Weiss's question) What is NOAA taking back as a flavor of this SAC meeting?

Mr. Weiss: The minutes prepared on the SAC meetings.

Dr. MacDonald: Minutes are not accurate - use flip chart information directly; more accurate.

Mr. Weiss: Subcommittees can address certain DEIS issues which can be discussed by the entire SAC at the next meeting. Does SAC want fuller discussion of certain issues raised by the comments on the DEIS?

Mr. Coon: Would like to discuss approach regulations, unknown if consensus can be reached but it is an important issue that needs to be addressed.

Mr. Sutcliffe: Page 174-175: Impact on users. If we can make regulations clear, it can help.

Dr. Nachtigall: Is proposed change to approach regulation for humpback whales or all whales in general (answer: humpback whales). Is proposed regulation only for humpback whales in Hawaii sanctuary?

Mr. Nitta: Changes for the Hawaii EEZ (out to 200 nautical miles of Hawaii).

Mr. Weiss: Sanctuary is incorporating the existing regulations. Sanctuary has to respond to the comments made in the DEIS regarding the approach regulations.

However, it is a NMFS responsibility to change the approach regulation, because it is a NMFS regulation.

Dr. MacDonald: Users seem to like the change. Does NOAA like the change?

Mr. Scot Yamashita (NMFS Enforcement): Penalty schedule, there is a long drawn out process. Need to ask if there is a State penalty involved. State's humpback approach law? Also, the Humpback approach regulation. Not sure public wants this to be modified. Word "intent" is hard to prove. Aggressive enforcement would be needed (e.g., undercover work) to prove intent.

Mr. Nitta: In the 1970's no regulations on approach harassment. In 1977 discussion held on the industry, California, etc. 100 yard prohibition created in 1987, interim regulations.

Mr. Coon: Important to have a law that is keepable. Piercing the 100 yard envelope should not be sole factor.

Mr. Lennan: Enforcement folks are right. Hard to prove "intent" But could define intent in the regulation as prima facia evidence.

Ms. Goodoni: Is the intent to harass still in the law ? (Answer: No)

Mr. Yamashita: Only six cases this year of whale violations. Unless physically present, start to finish, hard to make a case.

Mr. Coon: Still an envelop piercing law.

Ms. Bernard: Is this work for a subcommittee? No fisherman has been prosecuted in a whale violation.

Mr. Yamashita: One attempt at a fisherman and dolphin violation, but failed.

Dr. Herman: Prefer intent to harass rather than intent to pursue. Harass is more protective than pursue for ocean users.

Mr. Yamashita: Doesn't want to get in to "what if" scenario's. Need careful consideration of law changes because it will affect animals and user behavior all the way out to the EEZ.

Mr. Lennan: Suggest appointment of a subcommittee.

Mr. Coon: Need to protect inadvertent penetration of barrier. Wants this understanding.

Mr. Oishi: Topic for state and federal legal advisors and state and federal law enforcement.

A Sub-Committee to investigate intent to harass issue was formed: Members include Mr. Claud Sutcliffe, Mr. Skip Weinstein, Dr. Louis Herman, Mr. Glen Soma, Mr. Stan Butler, Ms. Hannah Bernard, Ms. Jan Pinney, Mr. Greg Kaufman, Ms. Beth Goodoni, Mr. Jim Coon, and Mr. Gene Nitta (to serve as technical advisor).

Mr. Coon asked for subcommittee recommendation by May 29 to give to OSP for OSP to negotiate with Congressional delegation.

Dr. Pai: Whether or not OSP can negotiate is questionable. SAC needs to take action on the change of law. Purview of the SAC is powerful enough to carry this message to NOAA itself. Some are putting overemphasizes on OSP's influence. Change to law is out of OSP's purview.

Mr. Weinstein: Violation of SAC charter will occur if recommendation of subcommittee goes out of the SAC. It needs SAC action to be given outside of the SAC.

Dr. Nachtigall: We are having a discussion about this, which should be the lowest level of what we are concerned about now.

Mr. McCallum: This is a serious issue, that needs more work than can be accomplished in a couple of weeks. As it is, any change to the Federal regulation may take years.

Dr. MacDonald: If OSP is recommending to SRD of its support for adopting existing regulations, than the SAC can comment/advise concerning the intent issue. Should pass on the concerns of the SAC

Dr. Pai: OSP will not carry SAC position. That is SRD's responsibility.

Mr. Tom: This discussion will be in my Congressional discussion at the same time of the OSP visit.

Mr. Lennan: Motion that SAC should come up with recommended language. OSP will deliver to Washington SAC's concern about language to the comments. SRD will also deliver this message.

Mr. Butler: Concern how do we get increased compliance and increased enforcement.

Mr. Coon: Create right of innocent passage.

Ms. Bernard: This already exists.

Mr. Weiss: SAC is advisory to the Sanctuary, not OSP. SAC must give its recommendation to the Sanctuary.

Dr. Pai: OSP will relay concerns without need for SAC action.

Mr. Lennan: Withdraw motion

Dr. Haas: Dislikes working as a committee as a whole prior to discussion of this. Should be under Robert's rules, should have been proposed.

Dr. MacDonald: Forum to clarify issues send a message to user groups. User groups think that this Sanctuary will do nothing but take away from them.

Ms. Bernard: Is our business finished. No, then, when are we going to discuss all of the alternatives.

Mr. Lennan: Preferred alternative - NMFS approach regulation. If it gets changed then it changes the Sanctuary regulation.

Dr. Pai: Agrees with Craig. OSP wants to build consensus of support for Sanctuary. OSP is willing to carry message forward. Although, OSP has focused on jurisdictional state concerns, not sanctuary management concerns such as this. OSP is not the answer.

Dr. MacDonald: MOU's in the DEIS with NMFS. Wants SRD to negotiate with NMFS via Jeff Benoit on this law.

Mr. Weiss: It can happen assuming that SRD receives recommendation from the SAC. This is a mechanism for that to happen.

Dr. Nachtigall: SAC expresses concern for right of innocent passage of boats and their regulation

Mr. Coon: Boundary issue, management issue, regulations and other issues. Motion to form three committees. One week before next SAC meeting the subcommittees will FAX reports to members. Gene Nitta will advise on the regulatory committee.

Dr. Harrigan-Lum: Hasty approach to address regulations should be discouraged.

Mr. Weiss: What are the subcommittees going to be doing? If discussing the DEIS/MP, they should only be further discussing the issues raised in the comments received on the DEIS for NOAA to consider in developing the FEIS/MP. Subcommittees charge: Further and more detailed response to the comments.

Dr. Pai: Commenting on the DEIS comments. OSP's visit to Washington D.C. Other issues not in the DEIS comments, but affect concerns. SAC should be able to discuss other non DEIS issues.

The SAC formed a sub-committee to discuss the Boundary. Members include: Dr. Louis Herman, Mr. Claude Sutcliffe, Dr. Craig MacDonald, Mr. Francis Oishi, Mr. Greg Kaufman, and Mr. Jim Coon.

A Sub-committee on Management was also formed. Members include Mr. William Lennan, Ms. Donna Liddicote, Mr. Stan Butler, Dr. June Harrigan-Lum, and Mr. Greg Kaufman.

Charter Subcommittee Presentation on proposed revisions to the SAC Charter

Subcommittee recommends having alternates. Two choices:

- 1) Members chooses the alternate. Alternate must be pre-approved by Sanctuary manager. Member to keep alternate informed. Council chair must be informed of alternate attending a meeting.
- 2) Sanctuary members or SAC should choose from the original SAC application list.

Dr. Haas: Doesn't recall unanimous decision to have alternates. Alternates not fully informed and not fully functional.

Mr. Weinstein: Minutes available one week before, so that alternates will be familiar with past SAC activities.

Ms. Goodoni: Believes alternates should be optional, not mandatory.

Dr. Herman: Wants alternates so that SAC can have access to same-interest knowledgeable input. Four members likely will not be available this summer.

Mr. Lennan: Fearful of government member control of meeting if absent non government members are not allowed to appoint alternates.

A vote on Alternates was taken. Seventeen voted in favor of alternates; choice 1.

Mr. Weiss: If you are recommending non-government members of the SAC be allowed to have alternates, consider issues such as whether to have a cap on the number of alternates that can attend one SAC meeting; at what point would meeting be canceled if too many members will be absent; don't want a meeting conducted mostly by alternates. Need to consider these points.

Mr. Tom will send recommendation to NOAA. Mr. Tom will get back to SAC members next week.

Next Meeting

Next meeting is scheduled for Thursday, June 6, 1996.

Place: Honolulu Interisland Terminal

Time: 9:30 am to 3:00 pm

Meeting adjourned.

Added notes: Comments on the minutes should be sent to:

Hannah Bernard, Secretary
P.O. Box 5361
Lahaina, HI. 96761
(Ph) 808-667-0437
FAX 808-661-9126

A special SAC information meeting will be held on June 17, 1996 (Monday).

Place: Honolulu Interisland Terminal

Time: 9:30 am to 3:00 pm

Topic: Presentation from the Olympic Coast National Marine Sanctuary (morning)

Presentation from the Monterey Bay National Marine Sanctuary (afternoon)

Guest speakers:

Todd Jacobs (Manager, Olympic Coast)

Terry Jackson (Manager: Monterey Bay)

Attendance is not mandatory, and the public is encouraged to come.